

Amendment No. 4 to HB2569

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AMEND Senate Bill No. 2829*

House Bill No. 2569

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subitem (H) and relettering the remaining subitems accordingly:

(H) Any depreciation permitted as a deduction in computing federal taxable income solely as a result of the provisions of Title 1, Section 101, of the Job Creation and Worker Assistance Act of 2002.

SECTION 2. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as a new subitem (I) and relettering the remaining subitems accordingly:

(I) Any depreciation in excess of that which the taxpayer deducted in computing its federal taxable income that could have been deducted in computing such income if the taxpayer had computed its depreciation under the provisions of Section 168 of the Internal Revenue Code as it existed and applied immediately prior to the passage of Title 1, Section 101, of the Job Creation and Worker Assistance Act of 2002.

SECTION 3. Tennessee Code Annotated, Section 67-4-2007(a), is amended by deleting the language "six percent (6%)" and by substituting instead "six and three-quarters percent (6.75%)".

SECTION 4. Tennessee Code Annotated, Section 67-4-1004, is amended by deleting the language "six and one-half (6 ½) mills" in subsection (a) and by substituting instead the language "twenty-one and one-half (21½) mills".

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Tennessee Code Annotated, Section 67-4-1004, is further amended by adding the following new subsection:

(c) Any wholesale dealers, jobbers, tobacco distributors, and retail dealers having cigarette tax stamps, affixed and unaffixed, in their possession on July 1, 2002, shall not be required to pay the additional cigarette tax resulting from the increase in tax rate from six and one-half (6 ½) mills to twenty-one and one-half (21½) mills on cigarettes to which such stamps in their possession are or shall be affixed.

SECTION 5. Tennessee Code Annotated, Section 57-3-302(a), is amended by deleting the language "one dollar and ten cents (\$1.10)" and by substituting instead the language "one dollar and ninety-eight cents (\$1.98)".

SECTION 6. Tennessee Code Annotated, Section 57-3-302(b) is amended by deleting the language "four dollars (\$4.00)" and by substituting instead the language "seven dollars and twenty cents (\$7.20)".

SECTION 7. Tennessee Code Annotated, Section 57-5-201(a)(1), is amended by deleting the language "three dollars and ninety cents (\$3.90)" and by substituting instead the language "seven dollars and two cents (\$7.02)".

SECTION 8. Notwithstanding any provision of law to the contrary, all increased revenues attributable to rate increases set forth in Sections 5, 6 and 7 above shall be paid into the state's general fund and shall be allocated exclusively for general state purposes.

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SECTION 9. Tennessee Code Annotated, Section 57-6-104(c)(5), is amended by inserting the language "or the state privilege tax levied in Tennessee Code Annotated, Section 57-5-201" immediately following the words "excise tax" in the first sentence.

SECTION 10. Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the language "at the rate of six percent (6%) of" and by substituting instead the language "on" and by adding at the end of the subsection the language "The tax shall be levied at the rate of six percent (6%); provided, however, effective July 1, 2002, the local option sales tax provided for in title 67, chapter 6, part 7, shall be two and three-quarters percent (2.75%) statewide. In those jurisdictions in which on June 1, 2002, the rate of the local option sales tax in effect or operative under title 67, chapter 6, part 7, was less than two and three-quarters percent (2.75%), the difference between two and three-quarters percent (2.75%) and the local rate in effect or operative on June 1, 2002, applied to the first one thousand six hundred dollars (\$1,600) of the sale or use of any single article of personal property shall be a state tax and those funds in excess of the local rate in effect or operative on June 1, 2002, shall be deposited in the state general fund. There is levied a state tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred (\$1,600), but less than or equal to three thousand nine hundred dollars (\$3,900), on the sale or use of any single article of personal property which shall be a state tax and those funds shall be deposited in the state general fund."

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SECTION 11. Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the subsection in its entirety and by substituting instead:

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of six percent (6%). Effective July 1, 2003, there is levied an additional state tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred (\$1,600), but less than or equal to three thousand nine hundred dollars (\$3,900), on the sale or use of any single article of personal property which shall be a state tax and those funds shall be deposited in the state general fund.

SECTION 12. Tennessee Code Annotated, Section 67-6-203, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 13. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears in subsections (a) and (c) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

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SECTION 14. Tennessee Code Annotated, Section 67-6-205, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 15. Tennessee Code Annotated, Section 67-6-206(b)(1), is amended by deleting the language "one and one-half percent (1.5%)" and by substituting instead the language "two and one-half percent (2.5%)".

SECTION 16. Tennessee Code Annotated, Section 67-6-702, is amended by adding the following as a new subsection (h):

(h) In any jurisdiction in which the local rate in effect or operative under title 67, chapter 6, part 7, is less than two and three-quarters percent (2.75%) on June 1, 2002, the rate shall be two and three-quarters percent (2.75%) with the difference between the local rate in effect or operative under title 67, chapter 6, part 7, on June 1, 2002, and two and three-quarters percent (2.75%) applied to the first one thousand six hundred dollars (\$1,600) of the sale or use of any single article of personal property being a state tax pursuant to Section 67-6-202 and remitted to the state for deposit in the state general fund as provided for in title 67, chapter 6, part 5 and § 67-6-103. The tax levied at the rate of two and three-quarters percent (2.75%) of the sale or use of an article in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand nine hundred dollars (\$3,900), is a state tax pursuant to Section 67-6-202 and shall be remitted to the state for deposit in the state general fund.

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SECTION 17. Notwithstanding the provisions of Sections 10, 12, 13, 14 and 16 of this act to the contrary, sales to or use by a contractor, subcontractor, or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a lump sum or unit price construction contract entered into prior to June 15, 2002, or awarded by the state or a political subdivision pursuant to a bid opening which occurred prior to June 15, 2002, shall be subject to tax at the state rate of six percent (6%) plus the local option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used. In addition, sales to or use by a subcontractor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a written subcontract entered into prior to September 1, 2002, if such subcontract is made pursuant to a general contract qualifying for the reduced rate of tax as set out above, shall be subject to tax at the rate of six percent (6%) plus the local option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used. Any vendor making such sales to any such contractor or subcontractor shall collect tax at the rates set in Sections 10, 12, 13, 14 and 16 of this act during the time that such rates are in effect. Any such contractor or subcontractor paying the rate set in Sections 10, 12, 13, 14 and 16 may then file a claim with the commissioner of revenue for a refund of any such tax paid to any of the contractor's vendors at a rate in excess of six percent (6%) plus the local

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option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used. For purposes of this subsection the term "lump sum or unit price construction contract" means a written contract for the construction of improvements to real property under which the amount payable to the contractor, subcontractor or material vendor is fixed without regard to the costs incurred in the performance of the contract. The provisions of this paragraph shall not be construed to increase the rate of tax imposed pursuant to the provisions of Tennessee Code Annotated, Section 67-6-206. Effective July 1, 2003, if any county or municipality increases its local option sales tax rate from that which was in effect on June 15, 2002, then any vendor making such sales to any such contractor or subcontractor shall collect tax at the state rate of six percent (6.0%) plus the local option rate then in effect and the state rate of eight and three-quarters (8.75%) on any single article of personal property on the amount in excess of one thousand six hundred (\$1,600), but less than or equal to three thousand nine hundred dollars (\$3,900). Any such contractor or subcontractor paying such rates may then file a claim with the commissioner of revenue for a refund of any such tax paid to any of the contractor's or subcontractor's vendors at a rate in excess of six percent (6%) plus the local option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used.

SECTION 18. Tennessee Code Annotated, Section 67-4-506, is amended by deleting the section in its entirety.

SECTION 19. Tennessee Code Annotated, Section 67-6-102(24), is amended by adding the following language as a new subdivision (I):

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(l) "Retail sale" or "sale at retail" includes sales by which merchandise is sold or delivered to the user through the use of a vending machine.

SECTION 20. Tennessee Code Annotated, Section 67-4-507(b), is amended by deleting subdivision (1)(C) in its entirety.

SECTION 21.

(a) Tennessee Code Annotated, Section 67-6-212(a), is amended by deleting the word "and" at the end of subdivision (3).

(b) Tennessee Code Annotated, Section 67-6-212(a), is further amended by deleting the punctuation "." at the end of subdivision (4) and by substituting instead the following language:

; and

(5) Receipts from coin-operated amusement device as defined in § 67-4-507.

SECTION 22. Tennessee Code Annotated, Section 67-6-330(a), is amended by deleting subdivision (10) in its entirety and by renumbering subsequent subsections accordingly.

SECTION 23. Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting subdivision (21) in its entirety and by renumbering subsequent subsections accordingly.

SECTION 24. Tennessee Code Annotated, Section 67-6-226, is amended by deleting the subsection in its entirety and by substituting instead the following:

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Notwithstanding other provisions of this chapter to the contrary, state tax at the rate of eight and three-quarters percent (8.75%) on each sale at retail is imposed with respect to fees for subscription to, access to, or use of television programming or television services provided by a cable television service provider authorized pursuant to title 7, chapter 59, or cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption, except that such state tax shall apply only to service charges or fees in an amount less than twenty-seven dollars and fifty cents (\$27.50).

SECTION 25.

(a) Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting the language "in excess of fifteen dollars (\$15.00) but".

(b) Tennessee Code Annotated, Section 67-6-103(f), is further amended by deleting "at the state rate of six percent (6%) in accordance with the provisions of part 2 of this chapter as well as pursuant to the local option revenue act in part 7 of this chapter," and by substituting instead "at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202,".

SECTION 26. Tennessee Code Annotated, Section 67-6-227, is amending by deleting language "eight and one-quarter percent (8.25%)" and by substituting instead "eight and three-quarters percent (8.75%)".

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SECTION 27. Tennessee Code Annotated, Section 55-4-113(a), is amended by deleting subdivision (6)(A) in its entirety and by substituting instead the following:

(6)

(A) Freight trailers, semi-trailers, and pole trailers used primarily for hauling freight and trailers used in the furtherance of a business, any trailer not required to be registered which the owner desires to be registered, shall be registered and, in addition to the tax herein prescribed for trucks and truck tractors, there shall be imposed on vehicles so classified a registration tax of one hundred dollars (\$100). Any trailer which was registered pursuant to this subdivision prior to July 1, 2002, and which is used after that date primarily for hauling freight or in the furtherance of a business or which was not required to be registered, but which was registered and for which the owner desires to continue the registration, shall pay an additional registration tax of fifty dollars (\$50.00).

SECTION 28. Tennessee Code Annotated, Section 67-4-1901, is amended by deleting the language "three percent (3%)" and by substituting instead the language "five percent (5%)".

SECTION 29. Tennessee Code Annotated, Section 67-6-102(24), is amended by deleting subitem (F)(viii) in its entirety and by substituting instead the following;

(F)

(viii) The renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are

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registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis.

SECTION 30.

(a) Tennessee Code Annotated, Section 67-6-102(29), is amended by deleting the language ". "Tangible personal property" does not include utility poles, anchors, guys, and conduits, and such facilities shall be deemed to be real property for the purposes of this chapter".

(b) Tennessee Code Annotated, Section 67-6-325, is amended by adding the following sentence at the end of the subsection:

This section shall not apply to utility poles, anchors, guys, and conduits.

SECTION 31.

(a) Tennessee Code Annotated, Section 67-6-102 (30), is amended by deleting the language "public pay telephone services," in subitem (D).

(b) Tennessee Code Annotated, Section 67-6-205, is amended by adding the following as new subsection (c):

(c) Notwithstanding any other provision of law to the contrary, the tax levied by this section applies to gross charges for the use of public pay telephones.

SECTION 32. Tennessee Code Annotated, Section 67-6-204(b), is amended by deleting the subsection in its entirety and by relettering subsequent subsections accordingly.

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SECTION 33. Tennessee Code Annotated, Section 67-6-309, is amended by deleting the section in its entirety and by substituting instead the following language:

§ 67-6-309

Persons paying the tax imposed by title 67, chapter 6 on the rental for films to theaters or the rental for films, transcriptions and recordings to radio stations and television stations operating under a certificate from the federal communications commission shall be exempt from any portion of the gross receipts tax as provided in § 67-4-708.

SECTION 34. Tennessee Code Annotated, Section 67-6-330(a), is amended by deleting subdivision (3) in its entirety and by substituting instead the following language;

(3) The first one hundred fifty dollars (\$150) per member per annum of membership dues or fees of a community service organization, and, if more than one (1) year's dues are paid in advance, such exemption shall be granted so that the one hundred fifty dollar (\$150) exemption shall be applied to each year's dues or fees;

Tennessee Code Annotated, Section 67-6-330(a), is further amended by deleting subdivisions (14) and (19) in their entireties.

SECTION 35. The commissioner of revenue is authorized to promulgate rules in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of this act. This authority should be interpreted broadly to enable the commissioner to give effect to the legislative intent. Such rules, to

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the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity and emergency rules.

SECTION 36.

(a) Sections 1 and 2 shall take effect upon becoming law and shall apply to excise tax returns filed for tax years ending on or after June 30, 2002, the public welfare requiring it.

(b) Section 3 shall take effect on July 1, 2002, and shall apply to tax years beginning on or after that date, the public welfare requiring it.

(c) Sections 4 through 9 shall take effect on July 1, 2002, the public welfare requiring it.

(d) Sections 10 and 16 shall take effect on July 1, 2002, the public welfare requiring it and shall be repealed on June 30, 2003, the public welfare requiring it.

(e) Section 11 shall take effect on July 1, 2003, the public welfare requiring it.

(f) Sections 12, 13, 14, 15 and 17 through 34 shall take effect on July 1, 2002, the public welfare requiring it.

(g) All other provisions of this act shall take effect upon becoming law, the public welfare requiring it.